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DHS FOR ASSISTANT SECRETARY BARTH
STATE FOR CA, CA/VO AND EUR/NB

E.O. 12958: N/A

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SUBJECT: ESTONIA: CLOSE TO AGREEMENT ON VWP MOU

SUMMARY

¶1. (SBU) Estonian negotiators from the Ministries of Foreign Affairs, Interior, and Justice reached near agreement with DHS and Department negotiators on the language of a Visa Waiver Program memorandum of understanding. Final agreement awaits completion of text revisions and then approval from the Estonian cabinet. The Estonians pointed out that the MOU and follow-on implementing agreements should take into account Estonian domestic law and EU obligations, but did not describe this as a major obstacle to signing the MOU. Speaking to negotiators and then to the media, the DHS lead negotiator and the Estonian Foreign Minister both praised the progress made and they looked forward to VWP travel for Estonians beginning soon, hopefully this year. A/S Barth proposed DHS Secretary Chertoff travel to Tallinn in March to sign the MOU. End Summary.

MOU THE FIRST OF SEVERAL STEPS

¶2. (SBU) DHS Assistant Secretary for Policy Richard Barth and Visa Waiver Program Office Director Marc Frey visited Tallinn on February 11 to negotiate the terms of a security memorandum of understanding. They were accompanied by representatives from the DHS legal advisor's office and from CA/VO and EUR/PGI. The Estonian side was represented by MFA Undersecretary for Legal and Consular Affairs Aino Lepik von Wiren. Assisting her were eight officials from Ministries of Foreign Affairs, Interior and Justice, including MFA Consular Department Director General Lauri Bambus.

¶3. (SBU) A/S Barth opened for the U.S. delegation by describing his team's recent success in Prague. If Estonia can similarly come to agreement on their MOU, the path would be open to a signing in March. A/S Barth said. This could be followed by a VWP-for-Estonia announcement by President Bush before years end, most likely around October 2008.

¶4. (SBU) Barth explained that the MOU is the next step in Estonia's progress towards accession to the VWP. The MOU provides a framework for cooperation on information sharing, aspects of which will have to be worked out in separate agreements or through more informal mechanisms, depending on Estonian policy and legislation. One such agreement, the HSPD-6 arrangement on known or suspected terrorists, has already been concluded. Other agreements will be sought to share information on serious criminals and on excluded aliens.

¶5. (SBU) Following the MOU (and its implementing agreements), the next steps, Barth explained, are an on-site evaluation by a DHS technical team (likely to happen in early April), and then DHS

deployment of the Electronic Travel Authorization (ETA) system required by U.S. legislation. Barth described ETA as similar in basic concept to the web-based pre-clearance system used by Australia. ETA enrollment would capture only about as much information as does the current I-94 "landing card". DHS intends to introduce ETA without a fee, though a fee remains a possibility in years to come.

¶6. (SBU) Beyond Estonia and the Czech Republic, Greece, Malta, and South Korea, said Barth, are aspirant countries which DHS sees as possible VWP entrants in 2008. Additionally, Slovakia, Latvia, Lithuania and Hungary could also enter this year, provided their national visitor-visa refusal rates come in under 10 percent for the fiscal year ending in September.

CLARIFICATION AND EDITS: EU ACKNOWLEDGED

¶7. (SBU) The Estonians, who had received the draft MOU text last month in Washington, sought clarification in a number of areas. The DHS team offered to make changes to the text in a number of areas to respond to Estonian concerns, notably:

-- Passenger Data: MOU sections dealing with this subject, as well as any implementing agreements on criminal and excluded- person data, will incorporate some language acknowledging Estonia's need to act in accordance with existing domestic and EU law.

-- ETA features and functions: Additional description and details about the system will be added.

-- Lost and Stolen Passports (LASP): The number of requested data fields will be reduced and the language modified to allow Post's existing LASP arrangement to satisfy this requirement.

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-- Replacement Passport Annotation: The requirement that passports issued to replace lost and stolen passports will be annotated as replacements will be dropped.

-- Air Marshals and Airport Security: Language will be added to these sections acknowledging that there are not yet any direct commercial flights between Estonia and the United States.

-- "Nationals": references to "citizens and nationals" benefiting from the VWP will be changed to read just "citizens". This to clarify that VWP will not extend beyond regular Estonian passport holders (i.e., not to the 8 percent of Estonia's residents of "undetermined citizenship" who travel on GOE-issued Alien Passports).

¶8. (SBU) In response to questions from DHS, the GOE committed to provide the U.S. side with additional language pertaining to:

-- GOE plan to institute an air marshal program on Estonian flights by the end of 2008.

-- The definition, in accordance with Estonian law, of "former" citizens.

¶9. (SBU) The GOE team cited at several points the need to acknowledge EU considerations in parts of the final MOU. However, the GOE never held up EU claimed competencies as a dead end or serious problem for any part of this bilateral agreement.

ESTONIAN CABINET DECISION POSSIBLE WITHIN WEEKS

¶10. (SBU) At the conclusion of the morning negotiating session DG Bambus stated that it was possible that the MOU, incorporating the agreed-upon changes, could be presented to the Cabinet as soon as two weeks from now. With Cabinet approval of the agreement, a date could then be set for its signing.

POSSIBLE SIGNING WITH SECRETARY CHERTOFF IN TALLINN?

¶11. (SBU) A/S Barth told our interlocutors that should a positive GOE decision on the MOU come in time, he would seek to bring Secretary of Homeland Security Chertoff to Tallinn to sign the MOU

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in mid-March (when he is scheduled to be in Europe for another purpose). Barth stressed to the GOE officials, that such a visit was still a tentative plan should not yet be discussed publicly.

SURPRISE MEETING WITH FOREIGN MINISTER

¶12. (SBU) U/S Lepik von Wieren stated early during the morning session that her delegation had only the authority to negotiate, but not to agree to the MOU, a decision resting with the Government at the Cabinet level. A positive indicator of the prospects for such agreement, however, came after lunch, when the MFA added a meeting a meeting for A/S Barth and Ambassador Phillips with Foreign Minister Urmas Paet to the program.

¶13. (SBU) FM Paet welcomed news of the morning's progress and asked A/S Barth about next steps, noting the high expectations in Estonia regarding VWP. Barth explained that the MOU was nearly OK, but that the two sides need to work further on arrangements for data-sharing. Following the MOU, comes the DHS technical team visit, and then ETA fielding, Barth said. FM Paet said the plan "sounds promising, if you can manage it", adding that, as was well known, Estonia and other EU member countries are also talking to the European Commission about U.S. VWP expansion. Barth thanked Paet for Estonia's leadership on the issue.

PRESS CONFERENCE: VWP IN 2008

¶14. (SBU) At the conclusion of the negotiations, Ambassador, A/S Barth FM Paet and U/S Lepik Von Wieren participated in a packed press conference. A/S Barth noted the progress on the MOU and stated his aim to conclude the agreement in the coming weeks. The MOU and other steps would "hopefully bring us to a point where sometime before the end of 2008 Estonians can travel to the U.S. without a visa for up to 90 days for general tourism purposes and business purposes."

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¶15. (SBU) FM Paet stated "Our goal is still to see [VWP accession] happen, hopefully before the elections this year or at least before the new administration starts at the White House." Paet left mention of EU concerns to Lepik von Wieren, who noted that it is "very important with the (MOU) signing that we follow our own legislation as well as our international obligations and EU laws."

¶16. (SBU) A/S Barth went on to answer several press questions regarding ETA, including its expected response time (minutes) and user cost (none initially). Further questions included one about whether UK and Irish resistance to VWP changes are hurting Estonian prospects for joining the program. Barth pointed out that "the individual MOUs must be signed on a government-to-government bilateral basis and no individual MOU is dependent on any other. If other governments resist the signing of a similar kind of agreement that was presented to your government that would in the future potentially jeopardize their participation in the Visa Waiver Program." A/S Barth also made a point to emphasize that visas would still be required for non-business/tourism travelers, such as students, temporary workers, immigrants, etc.

COMMENT

¶17. (U) Post stands ready to help Washington reach final agreement with the Estonians on an MOU text. Also, we are now seeking to find mutually agreeable dates in early April for the DHS technical team to come to Estonia.

Phillips